Supreme Court of the United States

OCTOBER TERM, 1951

No. 9

DONALD R. DOREMUS and ANNA E. KLEIN,
Appellants,

vs.

BOARD OF EDUCATION OF THE BOROUGH OF HAWTHORNE and THE STATE OF NEW JERSEY,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

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Interest of American Civil Liberties Union

The American Civil Liberties Union is a non-profit, non-partisan, non-sectarian organization devoted to the protection and preservation of the fundamental freedoms guaranteed to all citizens of this country by federal and state constitutions. Its membership is nation-wide and includes persons of different religious views and sects.

It believes no human freedoms are more important than those guaranteed in the First Amendment and that of those none is more to be preferred or more worthy of protection than freedom of religion. It believes in the fundamental

American doctrine of complete separation of Church and State, because without it religious freedom for all is impossible. That principle of separation, it believes, must be steadfastly and clearly maintained in its broadest aspects. It regards the tax-supported, free, public school as one of the most democratic American civil institutions and believes that its ideal of secular instruction should not be thwarted by using it as an agency for the assertion of the claims of religion.

For many years it has opposed, consistently, Bible reading, prayers and other religious services, ceremonies and instruction in the public schools, as a violation of the principles of separation of church and state and religious freedom under the First and Fourteenth Amendments of the United States Constitution.[1]

The Union has intervened here because this case concerns that problem and is important.

This brief is filed with the consent of the parties.

Brief Statement of the Case

This case involves the constitutionality of two New Jersey statutes (Rev. Stat. 18:14-77; Rev. Stat. 18:14-78).

R.S. 18:14-77 provides:

> "*Reading Bible at Opening of School.*
>
> At least five verses taken from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment, in each public school classroom, in the presence of the

[1] In its *amicus curiae* brief in *Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203, it anticipated the issues in the present case and cited state statutes and authorities relating thereto (see pp. 33-38 and Appendix of that brief); Stokes, "*Church and State in the United States*", Vol. II, p. 552.

pupils therein assembled, by the teacher in charge, at the opening of school upon every school day, unless there is a general assemblage of the classes at the opening of the school on any school day, in which event the reading shall be done, or caused to be done, by the principal or teacher in charge of the assemblage and in the presence of the classes so assembled."

R.S. 18:14-78 provides:

"*Religious Services or Exercises.*

No religious service or exercise, except the reading of the Bible and the repeating of the Lord's prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools."

Appellants are citizens and taxpayers, one being the parent of a child in a local public school (R. 1).

It is admitted that the appellee Board of Education, in compliance with such statutes, has engaged and is engaging in the practices, daily, of reading excerpts from that portion of the Holy Bible known as the Old Testament, without comment, and of having the Lord's Prayer recited in the classrooms and assembly halls in the public schools of the Borough of Hawthorne; also that these schools are supported by public tax, school funds obtained from the school district and from the State (R. 1-3, 5-6). It is stipulated that the Board has issued a directive providing that "any student may be excused during the reading of the Bible upon request" (R. 5).

We believe, as appellants assert, that these statutes and the practices thereunder constitute a violation of the First and Fourteenth Amendments of the United States Constitution.

POINT I

The New Jersey Statutes and the practices of the appellee Board of Education are not within the competence of the State and are in conflict with the First and Fourteenth Amendments of the United States Constitution.

From the very headings and texts of the statutes, it is perfectly plain that the practices involved are, and were understood by the Legislature to be, *religious services and exercises.*

Under these statutes there is no maximum limit to the number of verses which may be read. There is no requirement that they be from the King James version (Protestant) or from the Douay version (Roman Catholic) of the Bible or from the Hebrew Scriptures. There is no direction given for their selection. Presumably, the selection lies in the discretion of the individual school teachers or principals. It would be in accordance with the statute, in townships where Protestants are dominant, if the verses be selected from the King James version and the King James version of the Lord's Prayer be used, to the violation of constitutional rights of Catholics. It also would be in accordance with the statute, in townships where Roman Catholics are dominant, that their form of the Lord's Prayer be used and that the selections be taken from the Douay version, including, for example, readings from Maccabees I and II on the subject of purgatory, which Books are not in the King James version, to the violation of constitutional rights of Protestants. Whichever version of the Lord's Prayer is selected for public recitation, constitutional rights of Jewish children are impaired.

It is doubtful if the religious services or exercises demanded by the statute can be performed in less than twelve minutes a day or one hour a week. Several hours a week probably are necessitated. The time of public school teachers or principals must be used to conduct such religious services and exercises and in the selection of the verses to be read. The rooms and facilities of the public school buildings are used for such religious purposes. The time of pupils, required under the State's compulsory education law to attend school for secular education, is used for religious purposes. The statutes themselves permit no freedom from their compulsions, but even if they did that would not cure their constitutional infirmity.

The decision below of the Supreme Court of New Jersey (R. 22-38) sustains the statutes as not violating the First and Fourteenth Amendments on the theory that there is an "almost universal belief in God" (R. 33), that the Declaration of Independence "frankly grounded its position in the unalienable rights endowed by God" (R. 26), that "theism is the warp and woof of the social and the governmental fabric" (R. 34), that "The American people are and always have been theistic" (R. 35), that the purpose of the New Jersey statutes is "that belief in God shall abide" (R. 36), and that governmental "recognition" and "acknowledgment" of God as God must not be "suppressed" (R. 25, 37).

The proposition is thus advanced that the God of Nature invoked in the Declaration of Independence is, in effect, our government Deity. The conclusion is that children in the public schools should be compelled to worship the Jehovah of the Old Testament. Are they the same? Implicit in the failure to provide for readings from the New Testament is the conclusion that the Christian teachings in those

Scriptures and of God as portrayed therein, would be in conflict with the religious principles of some pupils.

The proposition is also advanced, in the decision below, that the Old Testament, because of its wide acceptance among Catholics, Protestants and Jews as Holy Writ, is not sectarian and, therefore, civil compulsion of any verses selected is justified, provided it is without comment. Also, this is said to be justified because all other religious groups are numerically small and have a negligible impact on our national life (R. 33).

A consideration of the history of the Church-State idea in Europe and in the American Colonies and of the reasons for separation of Church and State in the foundation of our government[2] should, we believe, determine the unsoundness of these fundamental propositions inherent in the statute and expressed in the decision below.

The Fourteenth Amendment has made applicable to the States the guarantees of the First, including the freedoms of religion, which have a preferred position. The States and all their agencies are as incompetent as Congress to enact laws or give sanction to acts legislative in character which are in conflict with the prohibitions of the First Amendment. They cannot, through school policy, invade these rights secured to every citizen (*Schneider* v. *State*, 308 U. S. 147, 160 (1939); *Cantwell* v. *Connecticut*, 310 U. S. 296, 303 (1940); *Jamison* v. *Texas*, 318 U. S. 413 (1943); *Murdock* v. *Pennsylvania*, 319 U. S. 105, 108, 115 (1943); *Douglas* v. *Jeannette*, 319 U. S. 157, 162 (1943); *Martin* v. *Struthers*, 319 U. S. 141, 143, 151-2 (1943); *Prince* v. *Massachusetts*, 321 U. S. 158, 164 (1944); and *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945)).

A State "shall make no law respecting an establishment

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[2] Outlined by this Court in *Everson* v. *Board of Education*, 330 U. S. 1 (1947); *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948) and *Reynolds* v. *United States*, 98 U. S. 145 (1878).

of religion, or prohibiting the free exercise thereof'' (*Everson* v. *Board of Education*, 330 U. S. 1, 8 (1947); *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203, 210 (1948)). As stated in those cases, the "establishment of religion" clause of the First Amendment means at least this:

> "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'" 333 U. S. 203, 210-11; 330 U. S. 1, 15-16.

In the *Everson* case, *supra* (at pp. 11, 15-16, 18, 26-27, 31-33, 53), each of the separate opinions traced the historical background which preceded and precipitated the adoption of the First Amendment and all were agreed, from its generating history, that the purpose and effect of the Amendment was to create a complete and permanent separation of the spheres of religious activity and civil authority by forbidding every form of public or state aid or support for religion, in any guise, form or degree; and

that the Amendment requires the state to be neutral in its relations with groups of religious believers and non-believers and to keep temporal institutions free from religious interference. (Cf. *McCollum* case, at p. 211.)

To us it seems very plain that the New Jersey law and practices aid one or more, if not all, religions and prefer one or some religions over others; that taxes are being levied and used there to support religious activities and the teaching and practicing of religion; and that, to the extent that church services are being conducted in the public schools (*i.e.*, by Bible readings and recitation of the Lord's Prayer which are an important parts of services in most Protestant churches), the state is forcing or influencing children to go to them.

The constitutional inhibition of legislation on the subject of religion forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. It safeguards freedom of conscience and worship and free exercise of the chosen form of religion (*Cantwell* v. *Connecticut, supra,* at p. 303; *U. S.* v. *Ballard,* 322 U. S. 78, 86 (1943)).

That aspect of the First Amendment which forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship is absolute. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. *Man's relation to his God was made no concern of the state.* (*U. S.* v. *Ballard, supra,* at pp. 86-7).

Centuries of strife over the erection of particular dogmas as exclusive or all-comprehending faiths led to the inclusion of a guarantee of religious freedom in the Bill of Rights, which was designed to guard against a repe-

tition of those bitter religious struggles. (*Minersville School District* v. *Gobitis*, 310 U. S. 586, 593 (1940); overruled on other grounds 319 U. S. 642 (1943)).

In *Board of Education* v. *Barnette*, 319 U. S. 624 (1943), a state law making it compulsory for children in the public schools to salute and pledge allegiance to the flag was held unconstitutional in its religious compulsion upon a certain sect that considered the flag a graven image and the compliance by their children with the flag salute a violation of the clause in the Decalogue against the worship of graven images. There was a strong dissent on the ground that the general subject matter—patriotism in the public schools—was within the competency of the state legislature and that its fortuitous effect on religious belief did not bring it in conflict with the First and Fourteenth Amendments.

In this case, the subject of the legislation is religious services and exercises in public schools. The compulsion is in respect of any and all selected verses of the Old Testament. The subject matter itself is not within the competency of the New Jersey legislature and the compulsions are not in any way limited to a particular sect, but are imposed upon all pupils of all denominations. The legislature refers to the Bible as the "Holy Bible". The imposition is necessarily without comment. There is no limit to the amount of the imposition and it is followed by compulsory prayer in which all the children ask forgiveness of their sins.

In *Illinois ex rel. McCollum* v. *Board of Education*, 333 U. S. 203 (1948), with the permission of the board of education, religious teachers employed by private religious groups gave religious instruction in the public schools once a week. Pupils, on parental request, were excused from secular classes and required to attend

the religious classes, but other pupils were not released from their public duties. This Court held the state's compulsory education system and machinery assisted and aided in providing pupils for the program and classes of religious instruction, that the public school was utilized to aid religious groups to spread their faith, and that the system fell squarely under the ban of the First Amendment. It said the state could not utilize its public school system to aid any or all religious faiths or sects.

In this case, the imposition of religious compulsion is much more direct and extensive. It is every day in the schools and throughout the entire system, and there is no limit as to the extent to which it may go in different townships. An enormous power has been delegated to unmentioned persons to apply in different districts or townships their own uncontrolled discretion as to what verses of the Old Testament to select and from what books of the Old Testament (whether in the Apocrypha of the King James version or within the Holy Canon of the Douay version) and as to the amount of time consumed in the services. In the *McCollum* case, the time consumed in the use of the public school buildings and facilities was one-half or three-quarters of an hour a week. There is nothing in this statute which would prevent these religious exercises, ceremonials and prayers taking up five hours or more a week.

In *Illinois ex rel. McCollum v. Board of Education, supra* (at pp. 215-216), Mr. Justice Frankfurter, in a concurring opinion, pointed out the compelling reasons for sharply confining a state and its public schools to secular education and to "instruction other than religious", leaving to the individual's home and church, education in the faith of his choice.

The public schools of America, including those in New Jersey, are temporal institutions, set up and governed by

civil authority. The principle is implicit in all public school systems that they must be under public control and secular in education. *City of New Haven* v. *Town of Torrington*, 132 Conn. 194.

As stated in *Peo. ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 349 (1910):

> "The public school is supported by the taxes which each citizen, regardless of his religion or his lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purposes. The truths of the Bible are the truths of religion, which do not come within the province of the public school. No one denies their importance. * * * This is done, not from any hostility to religion, but because it is no part of the duty of the State to teach religion,—to take the money of all and apply it to teaching the children of all the religion of a part, only."

As this Court said in the *Barnette* case, *supra*, at page 637 (cf. *Everson* case, *supra*, Jackson, J., at p. 24):

> "Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party or faction."

The fusion or commingling of secular and religious activities by Government through its instrumentalities, especially its public schools, is to be avoided.

Historically and necessarily, the principle of separation of church and state was carried over into the field of education. It was early recognized that if education was to be religious, it must be carried on with religious groups and without the support of the state; and that in an educational system supported by the state education must be

secular. Separation in education was necessary to save the public schools from being rent by religious conflicts. Prohibition of furtherance by the state of religious instruction became a guiding principle, in fact and feeling, of the American people. This was not due to any decline in the religious beliefs of the people and the secular public school did not imply indifference to the basic role of religion in the life of the people. Separation is a requirement to abstain from fusing the functions of Government and of religion. (See *Illinois ex rel. McCollum* v. *Board of Education, supra,* 333 U. S. 203, 215-16, 231, Frankfurther, J.)

Manifestly, education in the public schools of New Jersey under the statute and practices in question is not simply secular. It is a mixture of secular and religious education.

One of the great drives presently and constantly in motion is to abridge, in the name of education, the complete division of religious and civil authority which our forefathers made, by introducing religious education and observances into the public schools. (*Everson* case, *supra,* pp. 44, 63, Rutledge, J.)

The State of New Jersey, by these statutes, officially recognizes that the Bible, and the Old Testament portion of it are Holy and that the reading of the Bible and the recitation of the Lord's Prayer in its public schools is a religious service or exercise. The highest courts of other States have recognized that Bible reading, with or without comment, is religious instruction, a religious act and worship. (See, for example, *Peo. ex rel. Ring* v. *Board of Education,* 245 Ill. 334; 92 N. E. (2) 251 (1910); *State ex rel. Weiss* v. *District Board,* 76 Wisc. 177, 194, 199; 44 N. W. 967 (1890); *State ex rel. Finger* v. *Weedman,* 55 So. Dak. 343; 226 N. W. 348; *Herold* v. *Parish Board,* 136 La. 1034; 68 So. 116 (1915); *State ex rel. Freeman* v.

Scheve, 65 Neb. 853, 871, 880 (1902).) That recitation of the Lord's Prayer in a school assembly is a religious act or exercise is obvious. The Lord's Prayer to "Our Father" is an act of worship. It is not a secular act or exercise.

While there is some conflict in the state judicial decisions as to whether Bible reading is sectarian instruction, it seems clear, from any objective point of view, that it must be so regarded, as held in the state cases above cited.

There are different versions of the Bible, such as the Douay (Catholic) version and the King James (Protestant) version and one of these must be used in such reading. To the Catholic the King James version is sectarian and to the Protestant the Douay version is sectarian. To Jews and other non-Christians, the Christian Bible, of whatever version, is sectarian, since it includes the New Testament. The Jews and other non-Christians do not recognize that the New Testament is the word of God or that Jesus Christ is divine. To Christians the New Testament contains the highest and latest revelation of God's word and it is a discrimination against Christians not to read the New Testament, just as it would be a discrimination against Jews and other non-Christians to read the New Testament.[3] So, too, the Lord's Prayer is a sectarian prayer to those who do not recognize Jesus Christ as their Lord.

The Supreme Court of New Jersey justifies the practices under the statutes on the ground that the Old Testament is accepted by three great religions, the Jewish, Roman

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[3] In Louisiana and Illinois the courts have decided that the reading of the New Testament violates the religious liberty of the Jews. *Herold* v. *Parish Board, supra,* 136 La. 1034 (1915); *Peo. ex rel. Ring* v. *Board of Education, supra,* 245 Ill. 334.

Catholic and Protestant,[4] and that all other religious groups are "numerically small and, in point of impact on our national life, negligible" (R. p. 33).

That approach lacks the perspective of time and history and ignores the fundamental principles of religious freedom underlying the First Amendment.

It sets up, in reality, a "multiple establishment", contrary to the principles of the First Amendment which was not directed merely against a "single establishment" (Cf. Butts, *American Tradition in Religion and Education*" at pp. 196, 209-10). It overlooks that it has been among those three religious groups that such practices in the public schools have caused the most conflicts, as pointed out in Point II hereafter; also, that, at least, some large Protestant groups oppose such practices. (See Stokes, *Church and State in the United States*, Vol. II, p. 571; Johnson, *Church-State Relationships in the United States* (1934) at pp. 116-126.)

If that approach had prevailed when the Bill of Rights was adopted, there probably would have been no First Amendment or any guarantees of religious freedom for citizens of the United States because in the Colonies, just before and at the time of the Revolution, the dominant religious groups numerically and politically, as well as those which had the greatest impact on our national life, were the Congregationalists and Episcopalians, both of which had state established churches. At that time such religious groups as the Roman Catholics, Methodists, Lutherans, Quakers and Jews were numerically small and, up

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[4] Actually, there are marked differences in the content and rendition of the Old Testament in the Hebrew, King James and Douay versions of it. (See Vol. 3 (1947) Encyclopaedia Britannica article on "Bible", at pp. 499 *et seq.*)

to then, had had a negligible impact on our national life.[5] That, of course, is not true today. In the meantime, the relative size and influence of the Congregational and Episcopal groups has greatly diminished. Also, in the meantime have developed large and influential religious groups which either had not been heard of or were not a factor in the Colonies. Today in this country there are at least 256 religious sects or denominations, including a number of non-Christian religious groups. Under the U. S. Constitution there is or should be no difference in the principles applicable to a small minority religious group and to a large dominant religious group. The First Amendment does not select any group or type of religion for preferred treatment (*U. S.* v. *Ballard, supra,* at p. 87).

In recent years this Court has repeatedly insisted that in this land of many races and creeds the freedoms of religion of the First Amendment are for the benefit of and available to all religious groups and not simply majority, orthodox, wealthy and conventional religious groups. (See *Murdock* v. *Pennsylvania, supra,* at pp. 111, 115; *Follett* v. *McCormick,* 321 U. S. 573, 576-7 (1944); *Prince* v. *Massachusetts, supra,* at pp. 175-6; *Cantwell* v. *Connecticut, supra,* at p. 310; *United States* v. *Ballard, supra,* at pp. 78, 86, 93; *Board of Education* v. *Barnette, supra,* at pp. 642, 645 and 653; *Martin* v. *Struthers, supra,* at pp. 149, 150; *Communications System* v. *Dodds,* 339 U. S. 382, 449, Black, J.)

No state or official can prescribe what shall be orthodox or standard in religion. "Religious minorities as well as religious majorities were to be equal in the eyes of the political state"; "So far as the state was concerned there

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[5] Stokes, *Church and State in the United States,* Vol. I, p. 273; Sweet, *Religion in America* (1946), at pp. 271-282; Sweet, *Religion in Colonial America* (1942).

was to be neither orthodoxy nor heterodoxy"; "Religion is outside the sphere of political government" and no religion should receive the state's support (*Barnette* case, *supra*, at p. 642; and Frankfurter, J., at pp. 653-4).

In *Dennis* v. *United States*, 341 U. S. 494 (1951), at page 550, Mr. Justice Frankfurter stated:

> "The history of civilization is in considerable measure the displacement of error which once held sway as official truths by beliefs which in turn have yielded to other truths. Therefore the liberty of man to search for truth ought not to be fettered, no matter what orthodoxies he may challenge."

As stated in *Peo. ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 346, "All stand equal before the law,—the Protestant, the Catholic, the Mohammedan, the Jew, the Mormon, the free-thinker, the atheist"; "the majority has no right to force its views upon the minority, however small"; and "it is precisely for the protection of the minority that constitutional limitations exist."

Within these recognized principles, it would be just as justifiable and consistent, for example, for the Mormons (Latter Day Saints), in areas where they dominate, to insist that the Book of Mormon, which they regard as inspired of God, be read in public schools; or for Christian Scientists to insist that Mary Baker Eddy's "Science and Health with Key to the Scriptures" which they regard as inspired, to be read; or for Swedenborgians (New Church) to insist upon the readings of writings of Emanuel Swedenborg, such as "Arcana Celestia" or "Heaven and Hell", which they regard as inspired; or for Spiritualists to insist upon the reading of some of the messages which they regard as inspired; or for followers of Eastern religions, of which there are many in this country, to insist upon the

the reading of the holy books of the East such as the Confucian classics, the Buddha Scriptures and the Koran.

As noted above, the New Jersey statutes do not provide for the excuse or withdrawal of any pupil in the public schools during the reading of the Holy Bible or the repeating of the Lord's Prayer. Rather, they require such exercises in each public school classroom or assembly in the presence of the pupils therein.

Though the local town Board of Education has issued a directive that a pupil, upon request, may be excused during the reading of the Bible, that directive represents a failure to comply with the statute and is merely effective within that particular locality. The directive does not appear, from the record, to cover the recitation of the Lord's Prayer. But even if the statutes themselves did provide for such withdrawal upon request, the constitutional defects of these practices would not be cured. See the following cases where this point was specifically discussed: *Peo. ex rel. Ring* v. *Board of Education, supra; State ex rel. Weiss* v. *District Board, infra; Herold* v. *Parish Board, infra; Knowlton* v. *Baumhover*, 182 Ia. 691; 166 N. W. 202 (1918); *Harfst* v. *Hoegen*, 349 Mo. 808; 163 S. W. (2) 609 (1941).[6]

As the Illinois Supreme Court stated in the *Ring* case, *supra*, at page 351:

> "The exclusion of a pupil from this part of the school exercises in which the rest of the school joins, separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school which the law never contemplated. All this is because of his religious belief."

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[6] See also able dissenting opinions in *Wilkerson, et al.* v. *City of*

As Mr. Justice Frankfurter pointed out in the *McCollum* case *supra*, at page 227:

> "That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of limitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend."

Picture the actual scene of a child making a request to leave and then leaving the classroom or assembly hall just before the commencement of the religious exercises. This would require great personal courage and the chances are that the child would stay and participate in the exercises, even if they were in conflict with the religious beliefs of himself or his parents. As pointed out in the State cases cited above, the fact that a child is not required to attend religious classes is not the critical factor. The very fact that there is any reason for his exclusion is the thing that interferes with his religious freedom and shows that the exercises are sectarian.

The various cases which have arisen in the States on this subject of Bible reading and prayer in the public schools will be cited and reviewed by the parties in their briefs. Some of them are discussed hereinafter. Collections and discussions of these cases will be found in *Johnson "Church-State Relationships in the United States"* (1934 and 1950 Editions); *Stokes "Church and State in the United States"*, Vol. II, pages 549, *et seq.*; 141 A.L.R. 1145; 5 A.L.R. 66; *Butts, American Tradition in Religion and Education* (1950), at pp. 190-7.

We believe that the decisions and opinions of the state courts in which such practices have been disapproved contain the better reasoning and are consistent with

the true meaning of the First and Fourteenth Amendments, as defined by this Court in the *Everson and McCollum* cases, and with the other decisions of this Court referred to above. (See, *Peo. ex rel. Ring* v. *Board of Education*, 245 Ill. 334; 92 N. E. 251 (1910); 29 L.R.A. (N. S.) 442; *Herold* v. *Parish Board*, 136 La. 1034 (1915); 68 So. 116; 56 L.R.A. (N. S.) 1915 D 941; *State ex rel. Weiss* v. *District Board*, 76 Wisc. 177; 7 L.R.A. 330 (1890); 44 N. W. 967; *Board of Education* v. *Minor*, 23 Ohio St. 211 (1872); 13 Amer. Rep. 233; *State ex rel. Finger* v. *Weedman*, 55 So. Dak. 343; 226 N. W. 348 (1929); *State ex rel. Freeman* v. *Scheve*, 65 Nebr. 853; 91 N. W. 826; rehearing denied, 65 Nebr. 876 (1902); Cf. *State ex rel. Dearle* v. *Frazier*, 102 Wash. 369 (1918); See, also, the dissenting Opinions in *Wilkerson, et al.* v. *City of Rome, et al.*, 152 Ga. 762 (1921); *Kaplan* v. *Independent School Dist.*, 171 Minn. 142 (1927); *Pfeiffer* v. *Board of Education*, 118 Mich. 560 (1898).

The opinions in these cases contain a detailed discussion of the issues involved and answer fully and convincingly, it seems to us, the arguments advanced by the Court below in support of such practices. Probably the leading case on the subject is *People ex rel. Ring* v. *Board of Education, supra.*

It is not without significance here, we think, that in *Illinois ex rel. McCollum* v. *Board of Education*, 396 Ill. 14 (reversed in 333 U. S. 203), plaintiff relied primarily on the Illinois Supreme Court's earlier decision in *People ex rel. Ring* v. *Board of Education.*[7] In deciding against Mrs. McCollum, the Illinois Supreme Court sought to distinguish the *Ring* case on this ground:

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[7] See Transcript of Record, *Illinois ex rel. McCollum* v. *Board of Education*, U. S. Sup. Ct. at pp. 77, 80-83, 271-2.

> "It can readily be seen that the exercises as conducted there were part of the public school program carried on while the children participating were in attendance in the public school classes. The exercises complained of were actually worship services including the Lord's prayer, the singing of hymns, and the participation in the exercises were compulsory."

The exercises in question consisted of reading from the King James version of the Bible, repeating the King James version of the Lord's Prayer and the singing of hymns. In the *Ring* case the Court had held it was immaterial whether or not the pupils could be excused on request from such exercises (at p. 351).

In the case here, as in the *Ring* case, the exercises are conducted as part of the tax-supported public school program carried on while the children participating are in atendance in the public school classes, are compulsory by statute (herein with leave under a local directive to be excused upon request), are conducted by public school teachers or principals and in public school buildings and consist of Bible readings and reciting the Lord's prayer in concert and publicly. (In the *McCollum* case a pupil was not required to participate in the classes on religion.)

This case does not involve the reading or studying of the Bible as literature or history or incidental allusions to the Bible or religion[8] in the course of secular studies, as to which we express no opinion. It involves its reading as the Word of God, in a religious service, ceremony or exercise conducted solemnly in a school assemblage. Being thus read as the Holy Word and without comment, no opportunity is afforded to anyone to explain or to

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[8] (Cf. Jackson, J., *Illinois ex rel. McCollum v. Board of Education*, 333 U. S. 203, 232-6.)

interpret the meaning of the passages read or to discuss the history, source, background and context of such passages or the books of the Bible in which they occur. It is not possible to subject such readings to the intellectual process or to the tests of modern Biblical research or to permit any rationalization thereof in relation to other studies which the children may be pursuing in the public schools. Of course, if such comments were permitted, they too might offend the religious sensibilities of some pupils or their parents; but without such comments or discussion, the whole atmosphere in which the reading takes place is one of religious awe, exercise, worship and ceremony.

The question involved in this case is not whether the Bible (Old or New Testaments or both, in one or another version or translation) should be read or taught to or studied by children. That can be done freely and in accordance with one's particular faith in the homes and churches and in private and religious schools.

To suggest that the public schools should not be utilized for this purpose, is not a manifestation of any hostility whatever to the Bible, the Lord's Prayer or religion. (*Illinois ex rel. McCollum* v. *Board of Education, supra,* at pp. 211-2.) It is merely a recognition of the rights of all citizens to religious freedom.

Thereby, no child would be deprived of knowledge of the Old or New Testaments. Interestingly enough, it was only several centuries ago that the mere possession of the English translation of the Bible was a presumption of heresy.[9] Now, the Bible is in nearly every church, home, library, school, hotel, ship. In homes, churches and religious schools it is the subject of study, worship and exposition. It is not necessary or desirable that the

[9] Trevelyan, *English and Social History,* at p. 79.

State, through its public school system, personnel and facilities, should take over from the homes, churches and religious schools, such religious instruction and activities. It is best for religion and best for the State that that should not be done. (*Illinois ex rel. McCollum* v. *Board of Education, supra,* at p. 212 and at p. 232 Frankfurter J.; *Everson* v. *Board of Education,* 330 U. S. 1, 59 Rutledge, J.) Today it is estimated that one of every two Americans is a church member,[10] whereas in 1790 not more than one out of eight Americans belonged to any church.[11] Religion has flourished in this country under the principle of separation of church and state.

This Court has recognized that the provisions of the First Amendment, in the drafting of which Madison, directly, and Jefferson, indirectly, played such leading roles, have the same objectives and were intended to provide the same protection against governmental intrusion on religious liberty as Jefferson's Virginia "Bill for Establishing Religious Freedom" and Madison's "Memorial and Remonstrance" (see *Reynolds* v. *U. S.*, 98 U. S. 145, 163-4 (1878); *Everson* v. *Board of Education,* 333 U. S. 1, 13 (1948)).

We do not believe that the New Jersey statutes and practices involved herein and the decision below are consistent with the statements in those great documents of religious freedom. For instance, Madison in his "Memorial and Remonstrance"[12] maintained that "in matters of Religion, no man's right is abridged by the institution of Civil Society, and that Religion is wholly exempt from its cognizance"; and that "the same authority which can establish Christianity, in exclusion of all other Religions;

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[10] Stokes, *Church and State in the United States,* Vol. I, pp. 229-30.

[11] Year-book of American Churches (1951 Ed.), p. 239.

[12] Quoted in full as an appendix to *Everson* v. *Board of Education,* 330 U. S. 1, 63-72.

may establish with the same ease any particular sect of Christians, in exclusion of all other sects". Jefferson in the "Virginia Bill"[13] asserted that "No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever"; and "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical"; and "our civil rights have no dependence on our religious opinions".

When the Court below suggests (R. 35) that no Jewish parent should object to having his child repeat the Lord's Prayer, for Christ was a Jew speaking to Jews, the question arises as to whether the civil magistrate is not intruding his powers into the field of opinion, in the words of the "Virginia Bill". And when the Court below, in effect, establishes by judicial decree that "theism" is the national religion, and that minor religious groups (those other than the Jewish, Roman Catholic and Protestant) are not entitled to the equal standing beause their tenets "had no vital part in the formation of our national character", one wonders at the prophetic wisdom of Madison's suggestion that the same authority which can establish Christianity can easily establish a particular sect of Christians (Cf. *Deuteronomy* 13:1-9). It is not necessary for us to expatiate on these matters which are so familiar to this Court. We think they have application here.

We believe that the religious practices in question are outside of the competence of the State of New Jersey and its local boards of education and represent a direct violation of the First Amendment as applied to the States through the Fourteenth and are inconsistent with the decisions of this Court as to the meaning of the First Amendment.

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[13] *Everson* v. *Board of Education, supra,* at pp. 12-13; Hening, Stat. of Virginia (1823) 84.

POINT II

The attempts to force Bible reading and prayers into the public schools have created in the States many years of bitter divisions and strife. The cases illustrate the need and reason for a strict separation of State and religion in the area of the public schools.

The number of cases that have arisen in the States over the issue of Bible reading and prayer in the public schools indicate the strife and divisiveness that such practices cause. Most of these cases have been brought by Catholics, some by Jews, each representing a local minority religious group. Some dominant Protestant groups, in encouraging these practices,[14] have seemingly failed to appreciate the position of minority Protestant sects, Catholics, Jews and other non-Christians and non-believers, all of whom are required to pay taxes and children of whom attend the public schools. Their attitude might well be different if, by reason of a shift of population, such religious exercises and instruction in local public schools were to consist of prayers and readings characteristic of the Catholic or Jewish faiths or of other religious groups.[15]

We shall refer to a few of these cases which illustrate the point and indicate why it is of vital importance, in the protection of the religious liberty of all persons, that the principle of separation of Church and State be applied and maintained, strictly, in the field of free, tax-supported public school education.

In *Donahue* v. *Richards*, 38 Me. 376 (1854), defendant school committee directed the English Protestant version

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[14] See Butts, The American Tradition in Religion and Education (1950) p. 196.

[15] Cf. *State ex rel. Dearle* v. *Frazier*, 102 Wash. 369, 383-4 (1918).

of the Bible to be read in public schools and that all scholars should be required to read that version. Plaintiff's daughter, fifteen, a Roman Catholic, on direction of her father refused from conscientious religious scruples to read the Protestant version. She and her father regarded such reading as sinful. Defendant directed her to leave school. The parent employed a teacher at his own expense and sued for damages. The court held the father had received no pecuniary injury and the loss of being deprived of education fell upon the daughter. The court, thereafter, non-suited the daughter (38 Me. 379) and upheld the required reading of the Bible in public schools.

In *Spiller* v. *Inhabitants of Woburn*, 94 Mass. 127 (1866), a pupil sued to recover damages for being expelled from grammar school. The school committee had ordered school to be opened each morning with reading from the Bible and with prayer, and that during prayer scholars should bow heads. By a later modified order any pupil could be excused from bowing the head where the parent requested it. Plaintiff's father refused to request it and plaintiff was excluded from the school. The court, nonsuiting plaintiff and approving the practices, held the modified order did not compel the pupil to join in the prayer.

In *Peo. ex rel. Ring* v. *Board of Education*, 255 Ill. 334 (1910), parents of children, Roman Catholics, sought mandamus to prevent the reading of the King James version of the Bible and the repetition of the Lord's Prayer, as found therein, in the public schools. They alleged that their Church believes that the King James version is incorrect and incomplete, and disapproves of its being read as a devotional exercise, and that such rule violated their rights under the State and Federal constitutions.

In one of the most carefully written and learned opinions on the subject the court (at p. 338) held the exercises

constituted *"worship"*; that "They are the ordinary forms of worship usually practiced by Protestant Christian denominations"; and "One does not enjoy the free exercise of religious worship who is compelled to join in any form of religious worship." The court (at pp. 339-40) said: *"Prayer is always worship,"* and the wrong consisted of the compulsion to join in a form of worship; "The free enjoyment of religious worship includes freedom not to worship." The court, quoting Madison, held that "'religion, or the duty we owe to the Creator' is not within the cognizance of civil government." It stated (at p. 341) that most of the governments of the world have claimed and have exercised the right to interfere with and direct the religious profession and worship of their citizens, and that a government without a state religion was hardly known before the adoption of the Federal constitution. The court, in describing the Bible, stated (at p. 343):

> "The historical and literary features of the Bible are of the greatest value, but its distinctive feature is its claim to teach a system of religion revealed by direct inspiration from God. It bases its demand for the reverence and allegiance of mankind upon the direct authority of God himself."

The court (at p. 344) said that each party—Protestant and Catholic—claimed its own version is the most accurate presentation of the inspired word; that the Catholics claim there are cases of willful perversion of the Scriptures in the King James translation from which erroneous doctrines and inferences may be drawn; that the Lord's Prayer is differently translated in the two versions and it has been claimed that the Lord's Prayer has been tampered with and a discord thrown into daily devotions; that the Catholic version contains six whole books and portions of other

books not included in the King James version and the Protestant churches do not recognize them as a part of the Scriptures. The court remarked (at p. 345) that neither party would accept the Bible of the other as representing the inspired word of God; that differences of religious doctrine may seem immaterial to some but to others are vitally important; that "Sectarian aversions, bitter animosities and religious persecutions have had their origin in apparently slender distinctions."

The Bible, it said (at pp. 346-8), is a sectarian book.

The court (at p. 346) said the reading of the Bible in school constituted religious instruction, that if the Bible is to be read in school at all, it must be read *"as the living word of God"*, that its words are entitled to be received *"as authoritative and final."*

The court then (at p. 347) said in respect of the Catholic petitioners:

> "Why should the State compel them to unlearn the Lord's Prayer as taught in their homes and by their church and use the Lord's Prayer as taught by another sect?"

The court (at p. 347) said that the Christian believes "that Judaism was a temporary dispensation, and that Christ was the Messiah,—the Savior of the world,"; while the Jew denies Christ was the Messiah.

At page 348 the court pointed out that no test could be laid down in respect of selecting portions of the Bible for reading and that "the only means of preventing sectarian instruction in the schools is to exclude altogether religious instruction, by means of the reading of the Bible or otherwise" and added:

> "The Bible is not read in the public schools as mere literature or mere history. It cannot be separated from its character as an inspired book of religion."

To leave the selection to a teacher, whether irreligious, Protestant, Catholic or Jew, would be a good way of permitting all to be read. The court (at p. 349) said that the State of Illinois was a Christian state and that no doubt it was a Protestant state, but that the state could not, under the constitution, be a teacher of religion, that *the truths of the Bible are the truths of religion which do not come within the province of the public school.*

The court further held that exclusion of a pupil from the religious instruction or exercise did not cure the situation but caused discrimination and divisiveness and proved the instruction or exercise was sectarian and forbidden by the constitution (at p. 351).

In *Knowlton* v. *Baumhover,* 182 Iowa 691 (1918), the only public school of a certain district where the inhabitants were prevailingly Roman Catholic was held in a parochial school building, and in a number of different respects was merged in the parochial school. The court enjoined such activities. At page 704 it said:

> "If there is any one thing which is well settled in the policies and purposes of the American people as a whole, it is the fixed and unalterable determination that there shall be an absolute and unequivocal separation of church and state, and that our public school system, supported by the taxation of the property of all alike—Catholic, Protestant, Jew, Gentile, believer and infidel—shall not be used, directly or indirectly, for religious instruction."

It further said:

> "There is no such thing as a universally accepted religion, and differences of opinion and thought along these lines have developed an almost numberless variety of churches, societies, and other voluntary organizations, each dedicated to the promotion

of the peculiar views of its adherents. We speak of these diverse bodies as sects; and, while the word 'sectarian' is sometimes used as a term of reproach, there is a very just and inoffensive sense in which it may be said that every religionist is a sectarian; for, believing that he is right, and that his conception of the true relation between man and God is correct, he is conscientiously impelled to promote that faith by precept, example, and leadership." (at p. 704)

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"At the bar of the court, every church or other organization upholding or promoting any form of religious faith or practice is a sect, and to each and all alike is denied the right to use the public schools or the public funds for the advancement of religious or sectarian teaching." (at p. 706)

At page 720 it noticed the fact that in many instances the courts had excluded Bible reading from the schools because of suits brought by Roman Catholics and upon the theory that the law has excluded from our public schools all religious and sectarian teaching and training, Protestant and Catholic alike; and that the Catholics, having barred Protestant religions from the schools, could not complain if they were subjected to the operation of the same rule. At page 722 it stated that the controversy in regard to religious education was not to be decided by the number of adherents on either side, and added "*The law and one are a majority, and must be allowed to prevail.*"

To the same effect see *Harfst* v. *Hoegen*, 349 Mo. 808 (1942).

In *Board of Education* v. *Minor*, 23 Ohio State Reports 211 (1872), the Board of Education of Cincinnati adopted two resolutions concluding to discontinue religious instruction, including the Holy Bible, in the common schools. Taxpayers brought suit to enjoin the Board from giving up such religious instruction. Defendants in their answer

claimed that there were a number of Israelites and Roman Catholics that could properly object to such religious instruction and there were also a large number of persons in the community ready and qualified to act as public school teachers who object to Bible reading on conscientious grounds and are thereby precluded from employment as teachers. The Board of Education concluded that it was neither right nor expedient to continue in use in public schools the reading of any version of the Bible as religious exercise. The court said:

> "The same word 'religion', and in much the same connection, is found in the constitution of the United States. The latter constitution, at least, if not our own also, in a sense, speaks to *mankind*, and speaks of the rights of *man*. Neither the word 'Christianity,' 'Christian,' nor 'Bible,' is to be found in either. When they speak of 'religion,' they must mean the religion of man, and not the religion of any *class* of men. When they speak of 'all men' having certain rights, they can not mean merely 'all Christian men.' Some of the very men who helped to frame these constitutions were themselves not Christian men.
>
> We are told that this word 'religion' must mean 'Christian religion,' because 'Christianity is a part of the common law of this country,' lying behind and above its constitutions. Those who make this assertion can hardly be serious, and intend the real import of their language. If Christianity is a *law* of the state, like every other law, it must have a *sanction*. Adequate penalties must be provided to enforce obedience to all its requirements and precepts. No one seriously contends for any such doctrine in this country, or, I might almost say, in this age of the world." (at pp. 246-7)

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"*Legal* Christianity is a solecism, a contradiction of terms. When Christianity asks the aid of government beyond mere *impartial protection*, it denies itself. Its laws are divine, and not human. Its essential interests lie beyond the reach and range of human governments. United with government, religion never rises above the merest superstition; united with religion, government never rises above the merest despotism; and all history shows us that the more widely and completely they are separated, the better it is for both." (at p. 248)

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"The state can have no religious opinions; and if it undertakes to enforce the teaching of such opinions, they must be the opinions of some natural person, or class of persons. If it embarks in this business, whose opinion shall it adopt? If it adopts the opinions of more than one man, or one class of men, to what extent may it group together conflicting opinions? or may it group together the opinions of all? And where this conflict exists, how thorough will the teaching be? Will it be exhaustive and exact, as it is in elementary literature and in the sciences usually taught to children? and, if not, which of the doctrines or truths claimed by each will be blurred over, and which taught in preference to those in conflict? These are difficulties which we do not have to encounter when teaching the ordinary branches of learning. It is only when we come to teach what lies 'beyond the scope of sense and reason'—what from its very nature can only be the object of *faith*—that we encounter these difficulties. Especially is this so when our pupils are children to whom we are compelled to assume a dogmatical method and manner, and whose *faith* at last is more a *faith* in us than in anything else." (at p. 249)

In regard to the argument that the state should undertake to teach Christianity in such a broad sense as to be

in harmony with the different sects, the court (at p. 250) said that such law would be an *unchristian* law and that it would constitute "a state religion in embryo." It said (at p. 250) that in carrying out the bill of rights of the state it could summarize the matter in two words, by calling it the doctrine of "hands off." It said the true republican doctrine in regard to religion was simply and easily understood, to wit:

> "It means a free conflict of opinions as to things divine; and it means masterly inactivity on the part of the state, except for the purpose of keeping the conflict free, and preventing the violation of private rights or of the public peace. Meantime the state will impartially aid all parties in their struggles after religious truth, by providing means for the increase of general knowledge, which is the handmaid of good government, as well as of true religion and morality." (at p. 251)

After pointing out that the constitutional guarantees are for the purpose of protecting the weak against the strong and the few against the many, the court concluding, stated:

> "Government is an organization for particular purposes. It is not almighty, and we are not to look to it for everything. The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government." (at p. 253)
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> "Madison, who had more to do with framing the constitution of the United States than any other man, and whose purity of life and orthodoxy of religious belief no one questions, himself says:
>
> 'Religion is not within the purview of human

> essentially distinct from human government, and exempt from its cognizance. A connection between them is injurious to both. There are causes in the human breast which insure the perpetuity of religion without the aid of law.'" (pp. 253-4)

In *Clithero* v. *Showalter*, 159 Wash. 519 (1930), petitioners by mandamus sought to compel religious instruction in the public schools, claiming that the Bible should be read each and every day in the public schools and that the reading and the teaching of the Holy Scriptures should be made compulsory. The court denied the writ on the ground that the constitution of the State of Washington was "held to forbid everything that is here demanded." This Court in *Clithero* v. *Showalter*, 284 U. S. 573, dismissed the appeal "for want of a substantial federal question."

In *State ex rel. Finger* v. *Weedman, et al.*, 226 N. W. 348; 55 So. Dak. 343 (1929), defendants had ordered the Bible to be read or the Lord's Prayer repeated without sectarian comment in all school rooms of the public school. The King James version of the Bible was selected and the Lord's Prayer was repeated daily. Twelve or fifteen Roman Catholic children refused to attend the opening exercises, were expelled and not allowed to return unless they signed a written apology. Action was brought by the father of one of the children to compel readmission without apology and thereafter to permit the child to be absent during the Bible reading. The court on appeal granted the relief asked. The court noted the variations in the decisions in respect of Bible reading and attributed the differences to the personal beliefs and prejudices of the judges. The court (at p. 349) said that to use the Bible as a mere code of morals or as a book of history would be to affront all Christian sects; that it is hardly adaptable for use in

secular instruction without comment and analysis. The court (at p. 349) said:

> "The legitimate function of our public schools is to impart secular knowledge, and there can be no proper limitation on the comment necessary to impart such knowledge, if the subject is to be taught at all."

The court (at p. 350) said:

> "The persecution of our forefathers was merely one organization fighting another organization, and none of them fighting the living principles of the Bible, one trying to force on another its construction of the Bible and mode of worship. *The primary object of the Constitutions was to prevent that form of persecution. No other form was threatened or feared.*"

The court then noted the difference in the books of the Bible and in the translation of the Bible and that the Protestants accept all versions except the Douay versions; that their objection to that version is that it sanctions some of the dogmas and practices of the Catholic church denounced by Protestants; that if their aversion is well founded, that alone is sufficient evidence of a substantial difference; that the Douay version contains six books not found in the Protestant translations; that among those are the First and Second Maccabees, containing passages from which the Catholics obtain their belief in purgatory, a doctrine not accepted by the Protestants; that in the King James version the Lord's Prayer contains a sentence "Give us this day our daily bread", whereas the Douay version says "Give us this day supersubstantial bread"; that these differences give rise to bitter doctrinal controversies; that the King James version is bitterly opposed to

Pope is referred to as "that man of sin". The court at page 351 said that neither Judges nor teachers of the public schools could say which side is right and which side is wrong, and that considering the bitter dissensions between organizations over conflicting theories, religious freedom requires that education in that subject rest exclusively in the churches and in individuals; that *the state as educator must leave the teaching of religion to the church "because the church is the only body equipped to so teach."* The court (at p. 352) said that *if the state teaches religion,* many parents will, because of their religious belief, *keep their children from the public schools* and thereby be deprived of all public school privileges. The court (at p. 354) said:

> *"The state as an educator must keep out of this field,* and especially is this true in the common schools, *where the child is immature,* without fixed religious convictions, and the parents' liberty of conscience is the controlling factor, and not that of the pupil."

In *State ex rel. Weiss* v. *District Board,* 76 Wisc. 177 (1890), relators, Roman Catholics and parents of children attending public school, attempted to enjoin the reading of the King James version of the Bible in the public school, alleging that such version was incorrect and incomplete by reason of the omission of books held by the Roman Catholic Church to be integral portions of the inspired canon. They alleged that the Roman Catholic Church has divine authority as the only infallible teacher and interpreter of the Bible, and that the reading of the Bible without note or comment and without being expounded by the only authorized interpreters of same is not only not beneficial to the children but likely to lead to the adoption of dangerous errors. The

were being read and claimed that such portions did not contain sectarian matters. (Most of the portions of the Bible selected were of the New Testament. The only portions of the Old Testament included were parts of Psalms and of Proverbs.) The court stated that the religious world is divided into numerous sects maintaining different and conflicting doctrines; that some believe "in the literal truth of the scriptures, while others believe them to be allegorical teaching spiritual truths alone or chiefly" and that a great majority, if not all, of the sects base their peculiar doctrines upon various passages of the scriptures which may be reasonably understood as supporting the same. The case was determined under the constitution of Wisconsin, which prohibited sectarian instruction. The court determined that reading from the Bible in the schools without comment on the part of the teacher was sectarian instruction and "worship" and made the school a "place of worship". It was claimed that no rights were infringed if the children were not compelled to remain in the school room while the Bible was being read. The court (at pp. 199-200) said:

> "We cannot give our sanction to this position. When, as in this case, a small minority of the pupils in the public school is excluded, for any cause, from a stated school exercise, particularly when such cause is apparent hostility to the Bible, which a majority of the pupils have been taught to revere, from that moment the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils which the constitution seeks to establish and protect, and puts a portion of them to serious disadvantage in many ways with respect to the others."

One of the concurring opinions stated (at pp. 220-1):

> "All sects and denominations may teach the people their own doctrines in all proper places. Our constitution protects all, and favors none. But they must keep out of the common schools and civil affairs. It requires but little argument to prove that the Protestant version of the Bible, or any other version of the Bible, is the source of religious strife and opposition, and opposed to the religious belief of many of our people. It is a *sectarian* book. The Protestants were a very small sect in religion at one time, and they are a sect yet, to the great Catholic Church, against whose usages they protested, and so is their version of the Bible sectarian, as against the Catholic version of it.
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> "The common school is one of the most indispensable, useful, and valuable civil institutions this state has. It is democratic, and free to all alike, in perfect equality, where all the children of our people stand on a common platform and may enjoy the benefits of an equal and common education. An enemy to our common schools is an enemy to our state government. It is the same hostility that would cause any religious denomination that had acquired the ascendency over all others, to remodel our constitution and change our government and all of its institutions so as to make them favorable only to itself, and exclude all others from their benefits and protection. In such an event, religious and sectarian instruction will be given in all schools. Religion needs no support from the state. It is stronger and much purer without it."

In *State ex rel. Dearle* v. *Frazier*, 102 Wash. 369 (1918), the question considered was whether the giving of credits for Bible study done outside of school violated the constitution of Washington providing that no public moneys should be applied to any religious worship, exercise or

instruction. In holding that such acts were unconstitutional, the court went into some of the controversies in regard to the Bible, the books involved and whether portions of it could be considered independent of religious characteristics. In this connection it said (at p. 378):

> "Then, too, all citizens are not agreed as to the narrative and historical worth of the Bible. It is true that some of the events there recorded have shaped the destinies of millions of people, yet they are not mentioned in profane contemporaneous history. Some are not agreed whether many of the events there narrated are historical or allegorical; whether the earth was created in six days; where Cain obtained his wife; whether the whole earth was covered with a flood of waters; whether Jonah was swallowed by a whale; whether Elijah was translated by a whirlwind into heaven; whether Lot's wife was turned into a pillar of salt; whether our God stopped the sun in its course that Joshua might overcome his enemies; whether he made the waters of the sea to recede that his chosen people might pass to the promised land; whether God spake with the prophets, or ordered the lives of such great rulers as David and Solomon; are questions all sounding in narrative and history that have excited differences and controversies that are never settled.
>
> That Bible history, narrative, and biography cannot be taught without leading to opinion, and oft-times partisan opinion, is understood and anticipated by the school board. They admit, as plainly as language can admit, that Bible teaching does lead to sectarian opinion and differences of opinion upon religious questions."

The concurring opinion said (at p. 386) it was plain "the curricula of the public educational institutions cannot be made to include any kind of religious worship, exercise, or instruction."

In *Herold, et al.* v. *Parish Board,* 136 La. 1034 (1915), two of the petitioners were Jews, the third a Catholic. They complained of a resolution of the Board of School Directors which recited that the children in their public schools were at the most impressionable age for receiving and retaining good or evil and that the lessons and truths contained in the Holy Bible are acknowledged "by all right-thinking people" as being of paramount value; that therefore the principals and teachers were requested to open daily sessions in the public schools with readings from the Bible, without note or comment, and, when the leader is willing to do so, that the Lord's Prayer be offered. The court, in enjoining enforcement of the resolution, said that the lessons and truths contained in the Holy Bible to be taught by reading to the children

> "are read and taught as teachings from the inspired Word of God Himself. To read the Bible for the purposes stated requires that it be read reverently and worshipfully. *As God is the author of the Book, He is necessarily worshipped in the reading of it.* And the reading of it forms part of all religious services in the Christian and Jewish churches, which use the word. *It is as much a part of the religious worship of the churches of the land as is the offering of prayer to God.*" (at p. 1048)

The court stated that the reading of the Bible is religious instruction, not adapted for use as a text book; that such use would be inconsistent with its true character and that to permit the teacher to select the part of the Bible to be read without test determining the selection "is to allow any part, or all parts, to be selected"; to excuse the children on religious grounds from the reading

> "would be a distinct preference in favor of the religious beliefs of the majority, and would work

a discrimination against those who were excused." (at p. 1050)

and that *equality in public education would be destroyed under a constitution which seeks to establish equality* and freedom in religious matters.

The court held that the practices would discriminate against children of Jews.

In *State ex rel. Freeman* v. *Scheve*, 65 Neb. 853 (1902), a teacher employed in the public schools obtained leave of the school board to have religious exercises in her school. She prayed, read the Bible to the pupils and with the pupils sang gospel hymns. One of the parents objected. The court enjoined the practice, holding (at p. 871), that the exercises constituted religious worship and were sectarian in character. The court stressed the importance of keeping dissension out of the public school system (at p. 872), saying:

> "Unless opinions of universal acceptance in this country since the foundation of our government are at fault, it is a policy of the highest importance that the public schools should be the principal instruments and sources of popular education, because they exert, more than any other institution, an influence promotive of homogeneity among a citizenship drawn from all quarters of the globe. But if the system of compulsory education is persevered in, and religious worship or sectarian instruction in the public schools is at the same time permitted, parents will be compelled to expose their children to what they deem spiritual contamination, or else, while bearing their share of the burden for the support of public education, provide the means from their own pockets for the training of their offspring elsewhere. It might be reasonably apprehended that such a practice, besides being unjust and oppressive to the person immediately

> concerned, would, by its tendency to the multiplication of parochial and sectarian schools, tend forcibly to the destruction of one of the most important, if not indispensable, foundation stones of our form of government. It will be an evil day when anything happens to lower the public schools in popular esteem, or to discourage attendance upon them by children of any class."

In *Wilkerson, et al.* v. *City of Rome, et al.*, 52 Ga. 762 (1921), the court upheld an ordinance which required some portion of the King James version of the Bible, Old or New Testament and without comment, to be read in the public schools and that a prayer be offered to God in the hearing of the pupils, with provision for excuse of a pupil upon written parental request. The ordinance was attacked by Roman Catholics as contrary to their faith and the Jewish faith. The court held that the charter that established the colony of Georgia granted complete religious liberty to all "except papists", and (at p. 769) said:

> "It should be clearly understood, however, that this was not a movement for the separation of State from Christianity, but specifically a separation of Church and State. *Christianity entered into the whole warp and woof of our governmental fabric.*"

The court (at p. 766) stated that the pioneers in the formation and conduct of American colonial governments did not have in mind to bring about a complete separation of church and state.

The decision in the case at bar would seem to proceed upon the same theory, and in certain respects to follow the very phraseology of this Georgia decision, for here it has been held that theism (rather than Christianity) has entered into the governmental fabric and that in respect

of such religion or belief complete separation was not intended.

There have been a number of other cases in the State courts involving this subject matter. They emphasize further what the cases above-mentioned illustrate—that the use of the tax-supported, secular public schools and their compulsory machinery for religious instruction, exercises, services and worship, by means of Holy Bible reading, repeating of prayers or otherwise, has been and is the source of much bitter controversy and strife and the denial of religious liberty, in the States and their local school districts. The opinions and dissenting opinions in those cases recite the factual details and the arguments and counter-arguments.

There is no need of or justification for these conflicts in the public schools and the First Amendment, through the Fourteenth, was designed to prevent them by separating the spheres of religious and civil authority and activity. Religion is taught and should only be taught (by prayer, reading and studying the Bible or other sacred books and other exercises and devotions) in the homes, churches and religious schools where the truths of religion can be most effectively learned and enforced. In the American concept of government the State has no right to interfere with such religious activities. By the same token, the State, being a civil institution should not enter into the field of religious instruction through the facilities of its public schools supported and attended by persons having a wide variety of beliefs in respect of religion.

Conclusion

The State of New Jersey, by these statutes and the practices under them, and through its public school system, is not being neutral in its relations to groups of believers and

non-believers. It has made man's relation to his God the concern of the State. It has fused spheres of religious activity and civil authority. It is utilizing the State's tax-supported and tax-established public school system to aid faiths and is putting the momentum of its whole public school atmosphere and system behind religious instruction. It is using tax-supported property for religious instruction and exercises. It is providing pupils for religious services and exercises through use of the State's compulsory public school machinery. It is using its state power and laws to aid some religions and to prefer some religions over others. It is using taxes raised for secular public schools to support religious activities. It is commingling religious and secular instruction in the public schools.

All of this, we believe, is contrary to the principles underlying the First and Fourteenth Amendments of the United States Constitution and set forth by this Court in the *Everson* and *McCollum* cases. This is not a separation of Church and State. Separation means separation, not something less. The principle should be enforced in its full integrity.

Respectfully submitted,

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